



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/128,753 08/04/98 LIGHTCAP,

D DVL-003PAT

MARK F SMITH
SMITH BRANDENBURG FREESE & KNOCHELMANN
SUITE 229
10921 REED HARTMAN HIGHWAY
CINCINNATI OH 45242

HM12/0621

EXAMINER

PRYOR, A

ART UNIT

PAPER NUMBER

1616

DATE MAILED:

06/21/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/128,753

Applicant(s)

Lightcap et al

Examiner

Alton Pryor

Group Art Unit

1616



☒ Responsive to communication(s) filed on Apr 6, 1900

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-5 and 7-47 is/are pending in the application.

Of the above, claim(s) 34 is/are withdrawn from consideration.

☒ Claim(s) 33 and 36-41 is/are allowed.

☒ Claim(s) 1-3, 7, 14, 15, 17, 22, 25-27, 35, and 42-44 is/are rejected.

☒ Claim(s) 4, 5, 8-13, 16, 18-21, 23, 24, 28-32, and 45-47 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1616

Detailed Action

Election requirement in paper number 4 is not maintained. However, the restriction requirement in paper 4 is final after review of applicants' arguments.

Claim Rejection under 35 U.S.C. 102(b)

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 62091236; 4/25/87.

JP '236 discloses a composition comprising 3-90% corn oil, an emulsifier, water, and ethanol (antifoaming agent). See abstract.

Claims 35,42-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Henriet et al (WO 9601047; 1/18/96).

Henriet et al disclose a method of treating crops with a composition comprising a pesticide, vegetable oil, an emulsifying system, and water. The composition is formulated into an oil-in-water emulsion. See abstract.

Claim Rejection under 35 U.S.C. 103(a)

Art Unit: 1616

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3,7,15,17 rejected under 35 U.S.C. 103(a) as being unpatentable over JP

06080992; 3/22/94.

JP '992 discloses a composition comprising 20-25% coconut oil, lauryl alcohol ethoxylate, octyl phenol, and water. See abstract. The prior art does not disclose the instant amount of coconut oil of between 40 and 90 %. The reference discloses the composition as a detergent. In the absence of unexpected results, one having ordinary skill in the art would have been expected to determine the optimum amount of oil through routine experimentation. Optimization may result in the composition comprising the instant range of oil.

1. Claims 1 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts (US 5,580,567; 12/3/96).

Robert discloses a composition comprising a surfactant, cottonseed oil, alcohol ethoxylate. The reference teaches that the composition can comprise a pesticide, herbicide, or fertilizer. The reference does not provide an example composition comprising a pesticide. See abstract.

2. Claims 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '992 as applied to claims 1-3,7,15,17 above, and further in view of JP 06264097; 9/20/94 or Blandiaux et al (US 5,958,852; 9/28/99).

Art Unit: 1616

See rejection of claims 1-3,7,15,17 above. JP '992 recites a detergent composition with all the components of claims 1-3,7,15,17 except for the detergent comprising a quaternary ammonium compound or sodium lauryl sulphate and triethanolamine and crude oil. JP '097 discloses a detergent comprising a quaternary ammonium compound (See abstract) and Blandiaux et al disclose a detergent comprising sodium lauryl sulphate and triethanolamine (See abstract). One having ordinary skill in the art would have been expected to add the detergent composition taught by JP '097 or Blandiaux et al to the detergent composition taught by JP '992. One would have been motivated to do this because all compositions have the same utility, i.e. being used as detergents. In the absence of unexpected results, one having ordinary skill in the art would have used crude or refined oil.

Claim Objection / Allowable Subject Matter

Claim 4,5,8-13,16,18-21,23,24,28-32,45-47 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 33,36-41 are allowable. The following is a statement of reasons for the indication of allowable subject matter: The prior art does not teach a method of preventing the freezing of plants comprising the application of the instant composition to plants.

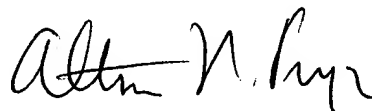
Art Unit: 1616

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Acton Payor whose telephone number is (703) 308-4691. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Deep, can be reached on (703) 308-4628. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.



Alton Pryor

Patent Examiner, AU 1616

6/16/00